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SUBJECT: DRC ELECTIONS: VALIDATION OF FIRST-ROUND
PRESIDENTIAL RESULTS DELAYED

REF: KINSHASA 1345

¶1. (U) Summary. The DRC's Supreme Court has delayed rendering its decision on the country's first-round presidential results due to a debate surrounding the timing of the second round of voting. The Court had been scheduled September 5 to make public its decision, which would have validated the results of the July 30 elections. It is not yet known when the Court will now rule, but a decision could come as soon as September 9. End summary.

¶2. (SBU) As reported reftel, the Court received eight challenges to the provisional election results made public by the Independent Electoral Commission (CEI) August 20. One of those challenges dealt with the CEI's decision to schedule the second round of voting for October 29. The debate surrounds little-noticed (up until mid-August) provisions of the constitution and the electoral law which state the CEI must proceed toward elections 15 days after the validation of the first-round results by the Supreme Court. With the October 29 date falling outside that time period, the challengers argued that such an election would be in violation of the law. Similarly, members of President Kabila's inner circle -- including the President himself -- have been pushing the CEI to organize elections within this 15-day window. A more conventional interpretation of the articles in question (one taken by members of the CIAT and the CEI) states the Electoral Commission must begin preparing for the second-round elections in that time frame, but not necessarily have them completed.

¶3. (U) In a communique released September 5, the Court announced that it had finished its work on the challenges levied regarding the first-round results. The Court said, however, that the question of the constitutionality of the October 29 election date takes precedence over any decision on electoral challenges. As such, the Court will not release its final decision until it has finished examining the issue of the 15-day time period.

¶4. (SBU) According to CEI President Abbe Apollinaire Malu Malu, the Court was not inclined to rule on this particular issue, as it fell outside their competence and represented a hypothetical scenario (especially since the 15-day period had not yet passed). The CEI has said publicly, however, that it cannot hold elections 15 days after the validation of first-round results due to logistical and financial difficulties. Consequently, the CEI has brought before the Court -- at the Court's request -- an appeal asking for an extension of the time required to organize elections based on "unexpected obstacles." Malu Malu said the CEI is basing its appeal on another article of the constitution -- one which

states that in cases of unforeseen difficulty, the period for holding elections can be extended for 60 to 80 days.

¶5. (U) Malu Malu said he expects the Court will render its decision on this issue "soon," although he could not provide a particular date for when it will occur. He said the Court would at the same time release its ruling on the first-round results. MONUC's Electoral Division chief Ali Diabacte said he believed the Court would render its decision on September ¶9. The Court's delay in issuing a decision would not, Malu Malu said, have any impact on the October 29 date for the next round of elections.

¶6. (SBU) Comment: Additional delays in validating the first-round results may risk further unnerving voters, many of whom regard the Supreme Court, as well as the CEI, with some degree of suspicion as being Kabila sympathizers. In this instance, however, the Court was correct in not ruling immediately on the issue of the 15-day requirement, as its authority to issue such an advisory opinion is not clear. A full election within 15 days is in any event simply not possible, which the Court probably also recognizes as well. Moreover, as the Court is likely to grant the CEI's request for an extension, a ruling opposing the reported wishes of the presidency demonstrates at least some degree of judicial independence. "Prolonging" the time period for organizing the elections will hopefully put an end to what has been another distracting affair in the political process. End comment.
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